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9 Attorneys for Plaintiff

10 THE UNITED STATES DISTRICT COURT  
11 DISTRICT OF ARIZONA

12 Cleopatra Martinez, Plaintiff,  
13 v. Maricopa County Community College  
14 District, a political subdivision of the state,  
15 and Rufus Glasper and Debra Glasper,  
16 husband and wife, Defendants.

**Case No. 2:15-CV-01759-NVW**

**VERIFIED AMENDED  
COMPLAINT**

(Jury trial requested)

18 For her Complaint, Cleopatra Martinez alleges:

19 **Parties**

20 1. Cleopatra Martinez (“Dr. Martinez”) is a United States citizen of Mexican  
21 national origin and at all relevant times a resident of Maricopa County, Arizona.

22 2. Maricopa County Community College District (the “District”) is a political  
23 subdivision of the state of Arizona, a body politic, and at all relevant times acted under  
24 color of state law.

25 3. Rufus Glasper (“Chancellor Glasper”) was at all relevant times the  
26 Chancellor of the Maricopa County Community College District and acting in that role,  
27 under color of state law, and for the benefit of his marital community.

28

## **Jurisdiction and Venue**

4. This case arises under 42 U.S.C. § 1983 *et seq.*
5. This court has federal question jurisdiction under 28 U.S.C. § 1331 and a).
6. This court is the proper venue under 28 U.S.C. § 1391(b).

## General Allegations

7. Maricopa County Community College District employed Dr. Martinez since January 1, 1985 as a professor of mathematics. Exhibit A, ¶1.

8. Dr. Martinez is a tenured professor at Maricopa County Community College District.

9. On August 9, 2013, Chancellor Glasper served a “Statement of Charges” on Dr. Martinez alleging that she violated the District’s “cash handling” rules and violated United States copyright laws. Exhibit B.

10. Chancellor Glasper recommended that Dr. Martinez be dismissed from employment at the District based upon the misconduct alleged in the Statement of Charges, although Dr. Martinez has been employed by the District for almost thirty years and has no record of previous discipline. *Id.*

11. Dr. Martinez exercised her right to appeal from Chancellor Glasper's recommended dismissal pursuant to Residential Faculty Policy ("RFP") 3.15.3. *See Exhibit C.*

12. On November 18, 2013, a Hearing Committee conducted an evidentiary hearing and considered both testimonial and documentary evidence regarding the District's Statement of Charges against Dr. Martinez.

13. The Hearing Committee made the following Findings of Fact, which are listed in Exhibit A in the correspondingly numbered paragraphs:

1. After having taught mathematics full-time for ten years at Denver Community College, Dr. Cleopatra Martinez moved to Arizona and started teaching mathematics full-time at Scottsdale Community College on January 1, 1985.

1       2. Dr. Martinez voluntarily transferred to Phoenix College ("PC") in  
2       1995 and has been teaching mathematics there full-time ever since.  
3       3. Dr. Martinez elected to voluntarily transfer to PC because there were  
3       very few minority students attending Scottsdale Community College, and  
4       she wanted to use her bilingual education skills in the mathematics  
4       classroom to better educate the large number of minority students attending  
5       PC.  
6       4. Dr. Martinez was elected by her colleagues to serve as the  
6       Chairperson of the Mathematics Department of PC from 2002 to 2005.  
7       5. In early 2010, PC discovered that Dr. Martinez may have exposed  
7       MCCCD to potential liability for copyright infringement.  
8       6. Dr. Martinez testified that, during her twenty-eight years of teaching  
9       mathematics in the MCCCD system, she and her colleagues in the  
10       Mathematics Departments of both Scottsdale Community College and PC  
11       routinely borrowed mathematics problems from other mathematicians to  
11       use in their student handouts for educational purposes on a not for profit  
12       basis.  
12       7. Dr. Martinez testified without rebuttal, that this borrowing of  
13       mathematics problems is a longstanding, widespread custom throughout the  
13       District and academia at large.  
14       8. Instead of requiring her mathematics students to purchase textbooks,  
15       Dr. Martinez prepared her own course materials which she called her  
15       " Lecture Notes" and distributed them to her students. MCCCD Exhibit  
16       List # 4-5 (Martinez Depo., pp. 77:17-78:15, 106:16-108:16, 121:25-  
16       140:13,132:16-137:25).  
17       9. Dr. Martinez read the Copyright Act of 1976 and believed that it  
18       authorized her to use small portions of other scholars' work under the "Fair  
18       Use" doctrine because she was using it only for classroom teaching  
19       purposes on a not for profit basis and her use of the material did not  
19       undermine the potential market for the other scholar's work.  
20       10. Per the "Fair Use" doctrine of the Copyright Act, the "use of a  
21       copyrighted work . . . for purposes such as criticism, comment, news  
21       reporting, teaching (including multiple copies for classroom use),  
22       scholarship, or research, is not an infringement of copyright." 17 U.S.C. §  
22       107.  
23       11. Dr. Martinez copied problems from copyright protected textbooks  
24       and inserted them into her course materials. MCCCD Exhibit List # 4-5  
24       (Martinez Depo., pp. 106:16-108:16).  
25       12. Dr. Martinez, in her Basic Arithmetic (MAT082) course, copied  
26       problems directly from a copyrighted textbook entitled "Basic  
26       Mathematics" and inserted them into her "MAT082 Basic Arithmetic  
27       Spring 2010" course materials which she distributed to students. MCCCD  
27       Exhibit List # 20 (Full-Sized Excerpted Comparison). She did not seek or  
28       obtain permission from the copyright holder.

1       13. Dr. Martinez also copied problems directly from the Sullivan &  
 2       Sullivan "Precalculus" textbook and inserted them into her "MAT182  
 3       Trigonometry Spring 2010" course materials. MCCCD Exhibit List # 22  
 4       (Full-Sized Excerpted Comparison). She did not seek or obtain permission  
 5       from the copyright holder.

6       14. Dr. Martinez did not require her students to purchase textbooks in  
 7       her Spring MAT082 Course. MCCCD Exhibit List # 18 (email from Dr.  
 8       Martinez stating, "I indicated in my syllabus that, instead of a published  
 9       textbook, I was using lecture notes in my MAT082 class.").

10      15. Dr. Martinez did not require her students to purchase textbooks in  
 11      her Spring MAT182 Course. *See* Dr. Martinez's hearing testimony  
 12      (conceding that students were not required to purchase a textbook in her  
 13      Spring 2010 MAT182 course).

14      16. On or around January 12, 2010, MCCCD's Vice President of  
 15      Academic Services, Ronnie Elliot, sent Dr. Martinez an email notifying her  
 16      that there were alleged copyright related problems with the materials she  
 17      had printed for the Fall 2009 and Spring 2010 semesters. MCCCD Exhibit  
 18      List # 23 (January 12, 2010 email). The materials in question were packets  
 19      of course materials for Dr. Martinez's MAT182 and MAT187 courses and  
 20      contained mathematics problems and graphs that were taken from  
 21      copyrighted textbooks. MCCCD Exhibit List # 1.1 (Ronnie Elliot  
 22      Declaration, ¶¶8-9); MCCCD Exhibit List # 16 (MAT182 course packet);  
 23      MCCCD Exhibit List # 7 (Sean Garrison October 28, 2010 Memorandum).

24      17. Dr. Martinez used three of the four packets of lecture notes in the  
 25      Spring of 2010 in two pre-calculus classes. *See* District Exhibit 6, parts 1-  
 26      3.

27      18. The MCCCD administration, following Vice President Elliot's  
 28      email, repeatedly explained its copyright concerns to Dr. Martinez and  
 29      asked Dr. Martinez to remove any copyright protected mathematics  
 30      problems from her materials. *See* Kakar Hearing Testimony.

31      19. On January 26, 2010, Vice President Elliot sent Dr. Martinez an  
 32      email outlining MCCCD's concerns regarding Dr. Martinez's potential  
 33      copyright infringement. MCCCD Exhibit List # 24 (January 26, 2010  
 34      email).

35      20. On January 28, 2010, MCCCD in-house counsel Margaret McConnell  
 36      discussed copyright compliance with Dr. Martinez telephonically.  
 37      MCCCD Exhibit List # 25 (January 28, 2010 email).

38      21. Dr. Martinez did not benefit from the multiple MCCCD copyright  
 39      information sessions noted above.

40      22. PC's own expert witness, Sean Garrison, testified that under the  
 41      "Fair Use" doctrine, someone could lawfully copy from a copyrighted  
 42      textbook without either using or purchasing the textbook.

43      23. On February 5, 2010, Vice President of Academic Affairs Casandra  
 44      Kakar, Interim Vice President of Administrative Services Paul DeRose, and  
 45      Dr. Martinez met to discuss Dr. Martinez's alleged misuse of copyrighted

1 materials. MCCC Exhibit List # 26 (February 12, 2010 email).

2 24 Dr. Martinez has not used any of the four sets of “lecture notes”  
 3 since the Spring of 2010 when PC first raised its concerns regarding the  
 4 notes.

5 25. On April 15, 2010, PC librarian Ann Roselle conducted a  
 6 personalized one-on-one copyright training session with Dr. Martinez.  
 7 MCCC Exhibit List # 28 (Copyright PowerPoint Presentation). *See also*,  
 8 Kakar Hearing Testimony.

9 26. When Dr. Martinez met with the librarian, the librarian told Dr.  
 10 Martinez that Dr. Martinez knew as much about copyright law as she did.  
 11 *See Martinez Hearing Testimony.*

12 27. Following the revocation of Dr. Martinez’s copying privileges, Dr.  
 13 Martinez was required to submit her copy requests to Mathematics  
 14 Department Chairperson Mr. Sueyoshi so that Mr. Sueyoshi could review  
 15 her materials for possible copyright violations prior to copying and  
 16 distribution to students. MCCC Exhibit List # 8 (April 2, 2010  
 17 Directive).

18 28. Dr. Martinez sought and obtained a form of written permission from  
 19 the publisher of the textbook, Sullivan & Sullivan’s “Precalculus,” to copy  
 20 materials from their book after PC accused her of violating copyright law.

21 29. On or around April 19, 2010, Dr. Martinez attempted to bypass the  
 22 copying restrictions by having an adjunct mathematics Professor, Johnny  
 23 Santellan, make 24 sets of copies of her “Lecture Notes” for distribution to  
 24 her mathematics students without obtaining prior approval from the  
 25 Mathematics Department Chairperson. MCCC Exhibit List # 12  
 26 (Sueyoshi Declaration); MCCC Exhibit List # 4-5 (Martinez Depo., pp.  
 27 223:11-224:21).

28 30. Because Dr. Martinez did not feel she was able to obtain reliable  
 29 guidance regarding copyright compliance from the District, she sought  
 30 advice from a private intellectual property attorney regarding the issue, Mr.  
 31 Frederic Bellamy.

32 31. Mr. Bellamy reviewed the first two sets of Dr. Martinez’s “lecture  
 33 notes” and concluded that they did not violate copyright law because they  
 34 fell under the “Fair Use” doctrine.

35 32. Mr. Bellamy based his conclusion that Dr. Martinez did not violate  
 36 copyright law on the opinion that the portion of material that Dr. Martinez  
 37 copied from the Sullivan & Sullivan Precalculus textbook was very small,  
 38 that she used the copied materials exclusively for educational purposes  
 39 without any profit motive, that the content of the copied material consisted  
 40 of mathematics problems that are arguably not subject to copyright in the  
 41 first place, and that the small portion of the textbook that Dr. Martinez  
 42 copied did not adversely impact the potential market for the textbook.

43 33. At the hearing, another lawyer practicing in the area of intellectual  
 44 property law, Sean Garrison, testified on behalf of PC. In contrast to Mr.  
 45 Garrison, Mr. Garrison testified at the hearing that the first three sets of Dr.

1 Martinez's lecture notes violated copyright law.

2 34. In contrast to his testimony at the hearing of November 18, 2013, in  
 3 his written report Mr. Garrison concluded only that the first three sets of  
 4 Dr. Martinez's lecture notes subjected the District "to a serious risk of a  
 5 copyright infringement claim." *See* District Exhibit 6, p.0002.

6 35. MCCC invited Dr. Martinez to a copyright workshop that was held  
 7 on March 1, 2010 at PC. Dr. Martinez chose not to attend the workshop.  
 8 MCCC Exhibit List # 10 (Solley Decl., ¶11).

9 36. PC President Anna Solley, on December 9, 2010, concluded that Dr.  
 10 Martinez's alleged misconduct posed an unacceptable legal risk of a  
 11 copyright infringement claim and imposed restrictions on Dr. Martinez's  
 12 photocopying privileges. MCCC Exhibit List # 10, (Solley Decl., ¶12).

13 37. MCCC sought a legal opinion from an outside copyright expert,  
 14 attorney Sean Garrison. MCCC Exhibit List # 10 (Solley Decl., ¶14);  
 15 MCCC Exhibit List # 7 (Sean Garrison October 28, 2010 Memo).

16 38. According to Mr. Garrison, the third set of "lecture notes" appeared  
 17 to have 13 mathematics problems copied from two other mathematics  
 18 textbooks.

19 39. Mr. Garrison testified that he was certain that Dr. Martinez has  
 20 committed copyright infringement. *See* Garrison Hearing Testimony. In  
 21 reaching this conclusion, Mr. Garrison reviewed thousands of pages of  
 22 materials including nearly 300 pages of Dr. Martinez's lecture notes and  
 23 three separate copyrighted mathematics textbooks. MCCC Exhibit  
 24 List # 6 (Sean Garrison April 9, 2013 Report); *see also* Garrison Hearing  
 25 Testimony.

26 40. In reliance upon Mr. Garrison's recommendations, PC President  
 27 Anna Solley issued a December 9, 2010 directive that imposed further  
 28 restrictions on Dr. Martinez's copying privileges. MCCC Exhibit List # 9  
 (December 9, 2010 Directive); MCCC Exhibit List # 10 (Solley Decl.,  
 ¶15).

29 41. The December 9, 2010 Directive prohibited Dr. Martinez from  
 30 utilizing any course materials of her own creation. MCCC Exhibit  
 31 List # 9 (December 9, 2010 Directive). Instead Dr. Martinez was required  
 32 to only use course materials that are "approved by the mathematics  
 33 department" or that are "available" in the bookstore for sale to students and  
 34 that are authored by persons other than [Dr. Martinez]." MCCC Exhibit  
 35 List # 9 (December 9, 2010 Directive).

36 42. The December 9, 2010 Directive further required Dr. Martinez to  
 37 submit her photocopy requests to the Mathematics Department Chair for his  
 38 approval. MCCC Exhibit List # 9 (December 9, 2010 Directive).

39 43. Despite MCCC's frequent discussions with Dr. Martinez regarding  
 40 the importance of complying with copyright laws and the December 9,  
 41 2010 Directive, Dr. Martinez continued to attempt to ignore the directive.  
 42 *See* Kakar Hearing Testimony.

1       44. At the beginning of the Fall 2012 semester (on or about August 21-  
 2       23, 2012), Dr. Martinez informed her students that they were not required  
 3       to purchase a course textbook and that she would provide them with her  
 4       own course materials in lieu of a textbook. MCCCD Exhibit List # 4-5  
 5       (Martinez Depo., pp. 232:19-233:21).

6       45. In the fall of 2012, Dr. Martinez sought to have her lecture notes  
 7       photocopied off campus at a nearby Staples store. This practice is  
 8       inconsistent with the December 9, 2010 Directive. MCCCD Exhibit  
 9       List # 9 (December 9, 2010 Directive); MCCCD Exhibit List # 4-5  
 10       (Martinez Depo., pp. 232:19-233:21).

11       46. Dr. Martinez did not submit her Fall 2012 materials to Mathematics  
 12       Department Chairperson Mr. Sueyoshi for approval. MCCCD Exhibit  
 13       List # 4-5 (Martinez Depo pp: 232:19-233:21).

14       47. Dr. Martinez made copies of her course materials at an off campus  
 15       Staples store and distributed them to students for \$11 per copy. MCCCD  
 16       Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

17       48. The \$11 course material fee was paid directly to Dr. Martinez by  
 18       students. MCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

19       49. PC accused Dr. Martinez of violating the District's "cash handling"  
 20       rules by distributing these course materials to her students if the students  
 21       reimbursed her for her out-of-pocket copying costs.

22       50. PC subsequently claimed that Dr. Martinez violated the District's  
 23       "cash handling" policies by seeking reimbursement for the copies.

24       51. MCCCD's policies prohibit instructors from having "any financial  
 25       interest in or receiv[ing] compensation from the sale of any unpublished  
 26       instructional materials required or suggested for a class that the instructor  
 27       teaches." MCCCD Exhibit List # 41 (Residential Faculty Policies, 3.2.4).

28       52. Dr. Martinez failed to follow the protocol set forth in the December  
 29       9, 2010 Directive in copying her Fall 2012 course materials. MCCCD  
 30       Exhibit List # 9 (December 9, 2010 Directive); MCCCD Exhibit List # 4-5  
 31       (Martinez Depo., pp. 232:19-233:21).

32       53. Dr. Martinez distributed course materials directly to students in her  
 33       Fall 2012 MAT151) class. MCCCD Exhibit List # 4-5 (Martinez Depo. pp.  
 34       232:19-233:21).

35       54. The MCCCD Administration learned of Dr. Martinez's unauthorized  
 36       distribution of course materials to students after one of Dr. Martinez's  
 37       MAT151 students complained to Mathematics Department Chairperson Mr.  
 38       Sueyoshi. The student complained that Dr. Martinez refused to provide her  
 39       with a receipt for the purchased course materials. *See* Kakar Hearing  
 40       Testimony.

41       55. Upon learning that Dr. Martinez had distributed course materials to  
 42       students allegedly in violation of MCCCD's cash handling policy, President  
 43       Solley instructed Martinez to immediately issue refunds to her students via  
 44       personal check. MCCCD Exhibit List # 1 (October 18, 2012 Counseling

1 Notice); *see also* Kakar Hearing Testimony.

2 56. On or around October 18, 2012, President Solley; and Dr. Kakar met  
 3 with Dr. Martinez to explain the seriousness of Dr. Martinez's alleged cash  
 4 handling violation. MCCCD Exhibit List # 3 (October 18, 2012,  
 5 Counseling Notice); *see also* Kakar Hearing Testimony. In addition,  
 6 President Solley and Dr. Kakar prepared a written counseling memo dated  
 7 October 18, 2010 for Dr. Martinez regarding her alleged violation of cash  
 8 handling rules. Dr. Martinez was provided with a copy of the October 18,  
 9 2010 counseling notice and President Solley proceeded to explain to Dr.  
 10 Martinez the seriousness of the alleged cash handling violations and the  
 11 requirement that Dr. Martinez issue reimbursements to her students.  
 12 MCCCD Exhibit List # 3 (October 18, 2012 Counseling Notice); *see also*  
 13 Kakar Hearing Testimony.

14 57. Several months later, on or around January 9, 2013, Dr. Kakar  
 15 learned that most (if not all) students had not yet received refunds from Dr.  
 16 Martinez. MCCCD Exhibit List # 39 (various emails regarding student  
 17 refunds). As a result, Dr. Kakar instructed Dr. Martinez to provide copies  
 18 of refund checks by January 18, 2013. MCCCD Exhibit List # 39 (various  
 19 emails regarding student refunds).

20 58. Dr. Martinez failed to produce a single refund check by the January  
 21 18, 2013 deadline. MCCCD Exhibit List # 39 (various emails regarding  
 22 student refunds).

23 59. Dr. Martinez did not think that she had violated any District rule in  
 24 reference to the copies. Therefore, she declined to follow the December 9,  
 25 2010 order because she believed she was not required to do so under any  
 26 District rule.

27 60. At the November 18, 2013 hearing, Dr. Martinez did not provide any  
 28 explanation for her refusal to comply with the October 18, 2012 and  
 1 January 9, 2013 directives to issue refunds to her students. *See* Martinez  
 2 Hearing Testimony.

3 61. At the hearing Dr. Martinez testified that she had made a "mistake"  
 4 and, in retrospect, should have complied with President Solley's  
 5 instructions. *See* Martinez Hearing Testimony.

6 62. On or around August 9, 2013, MCCCD Chancellor Glasper sent Dr.  
 7 Martinez a letter informing her that MCCCD was proceeding with  
 8 termination proceedings. Included with this letter was a statement of  
 9 charges that summarized the particular violations Dr. Martinez had been  
 10 charged with (hereinafter referred to as "Statement of Charges.") MCCCD  
 11 Exhibit List # 1 (Statement of Charges).

12 14. The Hearing Committee unanimously rendered the following conclusions,  
 13 which are in Exhibit A in the correspondingly numbered paragraphs:

14 63. PC failed to carry its burden of proof relating to violation of  
 15 MCCCD's cash handling rules found in MCCCD Administrative  
 16 Regulations 1.17, violation of Residential Policy Manual 3.2.4 (relating to  
 17 financial interests in unpublished materials), violation of U.S. Copyright

1 Law and fair use guidelines, and violation of MCCCD Administrative  
 2 Regulations 3.2.4 and 3.2.5 related to copyright regulations.

3 64. Notwithstanding their education, their experience, and their good  
 4 faith, Mr. Bellamy and Mr. Garrison disagreed as to whether or not Dr.  
 5 Martinez violated copyright law. Therefore, it is inconclusive whether Dr.  
 6 Martinez intentionally and/or inadvertently violated federal copyright law.

7 65. It is inconclusive as to whether or not Dr. Martinez violated the  
 8 “cash handling” policies of MCCCD.

9 66. Dr. Martinez willfully and intentionally failed to follow instructions  
 10 that were communicated to her when she failed to issue refunds to students  
 11 as directed by President Solley.

12 67. Dr. Martinez conceded that she never complied with President  
 13 Solley’s clear directive to issue refunds to her students. Although Dr.  
 14 Martinez now regrets her decision not to comply with President Solley’s  
 15 directive, she has never claimed that she did not understand the instructions  
 16 or that the instructions were beyond the scope of management’s authority.  
 17 Viewed in light of these facts, Martinez’s claim that she “made a mistake”  
 18 is an admission of willful insubordination.

19 68. By failing to comply with President Solley’s directive to issue  
 20 refunds to her students, Dr. Martinez violated MCCCD Administrative  
 21 Regulations 6.7.1, which prohibits the “[w]illful and intentional violation of  
 22 any . . . MCCCD administrative regulation that affects the employee’s  
 23 ability to perform his or her job.”

24 69. By failing to comply with President Solley’s directive to issue  
 25 refunds to students, Dr. Martinez violated MCCCD Administrative  
 26 Regulation 6.7.3 which prohibits the “[w]illful and intentional failure to  
 27 perform job duties that have first been communicated to an employee and  
 28 are within the employee’s scope of employment.”

15. The Hearing Committee made the following recommendations, which are in  
 16 Exhibit A in the correspondingly numbered paragraphs:

17 70. We hereby recommend that the Governing Board deny President  
 18 Solley’s termination request and allow Dr. Martinez to continue her  
 19 MCCCD employment.

20 71. Per MCCCD Administrative Regulation 6.7 indicating that violation  
 21 of any Employment Standards “constitutes grounds for disciplinary action  
 22 up to [emphasis added] and including termination,” we hereby recommend  
 23 that the Governing Board retain Dr. Martinez.

24 16. Notwithstanding the Hearing Committee’s unanimous conclusion that the  
 25 District had failed to satisfy its burden of proof and that Dr. Martinez should be allowed to  
 26 continue her employment, Chancellor Glasper unilaterally discontinued her employment

1 by suspending Dr. Martinez's employment on March 7, 2014 without pay for fourteen and  
 2 a half months – from March 1, 2014 to May 15, 2015.

3       17. The suspension was based upon a new Statement of Charges backdated to  
 4 February 10, 2014 that contains facts specifically rejected by the Hearing Committee.  
 5 Exhibit D.

6       18. The Notice of Suspension states:

7       Based upon the written statement of charges, I have decided to suspend  
 8 your employment under my sole authority as Chancellor pursuant to section  
 9 3.11 of the Residential Faculty Policies. The purpose of this letter [is] to  
 10 notify you that your suspension from your position as Mathematics faculty  
 11 at Phoenix College will begin on March 1, 2014 and end on May 15, 2015.  
 12 Your teaching responsibilities and pay will resume Fall semester, 2015  
 13 unless you choose to retire.

14       Exhibit D.

15       19. Although the Hearing Committee found the District had not proved Dr.  
 16 Martinez violated copyright law or the District's money handling policy, Chancellor  
 17 Glasper's Statement of Charges, which claims it was expressly based on the Hearing  
 18 Committee's findings, reiterates those same unproven allegations. Exhibit D ("Based  
 19 upon the findings of the hearing committee which are attached to this statement . . .").

20       20. Chancellor Glasper justified the suspension citing Residential Faculty Policy  
 21 3.11.

22       21. Residential Faculty Policy 3.11 states:

23       **3.11 Suspension of a Faculty Member**

24       **3.11.1**

25       Upon written statement of charges formulated by the Chancellor, charging  
 26 a faculty member of the MCCC, the Chancellor, or his/her designee, may  
 27 immediately suspend the Faculty member and give notice of suspension.  
 28 At the option of the Faculty member, the MCCC Faculty Association  
 President will be notified of this action.

29       **3.11.2**

30       The notice of suspension shall be in writing and be served upon the Faculty  
 31 member, personally or by U.S. (registered or certified) mail, addressed to  
 32 the Faculty member at his/her place of residence in the MCCC records.

33       **3.11.2**

1 Any Faculty member who has been suspended pursuant to this Section will  
 2 normally be paid his/her salary during the period of suspension. A  
 3 suspension without pay will occur only upon advice of General Counsel. If  
 4 payment is to be withheld, the Vice Chancellor of Human Resources will  
 first consult with and advise the member, and at the option of the Faculty  
 member, the Faculty Association President regarding the rationale for that  
 action.

5 22. The Acting/Interim Vice Chancellor of Human Resources did not consult  
 6 with Dr. Martinez until a week after Chancellor Glasper suspended her pay.

7 23. Residential Faculty Policy 3.11 is distinct from Residential Faculty Policy  
 8 3.13, Faculty Member Dismissal – Probationary and Appointive. *See infra.*

9 24. Chancellor Glasper conflated RFP 3.11 and 3.13.

10 25. RFP 3.13 does not give Chancellor Glasper the right to suspend a Faculty  
 11 member without pay based upon a statement of charges seeking dismissal.

12 26. Under RFP 3.13.8, Chancellor Glasper must forward his recommendation if  
 13 different than the Hearing Committee's recommendation, "along with the summary of  
 14 the evidence, a copy of the findings of fact, conclusions of law, and final  
 15 recommendations of the Hearing Committee to the Governing Board." *See infra.*

16 27. Under RFP 3.13.10, "[t]he Governing Board . . . shall render a final decision  
 17 for retention or dismissal." *See infra.*

18 28. Chancellor Glasper short circuited the hearing procedures and usurped the  
 19 Board's prerogative by failing to follow RFP 3.13.10 and unilaterally imposing an unpaid  
 20 suspension.

21 29. A suspension without pay for fourteen and a half months deprived Dr.  
 22 Martinez of the benefits of her contract for part of the 2013/2014 school year and her  
 23 entire contract for the 2014/2015 school year.

24 30. Chancellor Glasper's rejection of the Hearing Committee's factual findings  
 25 and unilateral imposition of a fourteen-month, unpaid suspension on Dr. Martinez violates  
 26 the District's Residential Faculty Policies and flatly usurps the Board's ultimate authority  
 27 to discipline its employees.

28 31. Specifically, RFP 3.13 provides:

### **3.13. Faculty Member Dismissal – Probationary and Appointive**

A Faculty member who is recommended, by the College President, through the Chancellor, to the Governing Board, for dismissal shall have access to the following due process procedures.

### 3.13.1.

A written statement of charges, formulated by the College President, shall be forwarded to the Vice Chancellor of Human Resources. After review of the charges, the Vice Chancellor, in consultation with the MCCCD Legal Office, may recommend, to the Chancellor, that there exists *prima facie* cause for the dismissal of a Faculty member. The Chancellor shall inform the Governing Board in writing, with a copy of the recommendation being sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in the MCCCD records. The Vice Chancellor's recommendation will give notice to the Chancellor, Governing Board, and the Faculty member of the intention to formally recommend dismissal, which shall not be sooner than thirty (30) days from the date of the letter, nor later than the end of the current academic year.

### 3.13.2.

A written statement of charges shall be provided to the Chancellor, Governing Board, and the Faculty member as an attachment to the notification outlined in the preceding paragraph. The statement of charges shall state, if applicable, the statutes, policies, rules, or written objectives of the College that the Faculty member is alleged to have violated. The statement of charges shall be of such specificity that the Faculty member will be able to prepare a defense based on the statement.

### 3.13.3.

The Faculty member shall have the right to a hearing by filing a written request with the Vice-Chancellor within five (5) business days after being served with a notice of intent to dismiss. The filing of a timely request shall suspend the dismissal procedure, pending the completion of the hearing.

### 3.13.4.

Upon request, a Hearing Committee shall be constituted within five (5) business days and shall be composed of three (3) Faculty members: one (1) appointed by the Chancellor, one (1) selected by the President of the Faculty Association, and one (1) selected by the member. All three (3) shall be Appointive Faculty. The committee member selected by the Chancellor and the President of the Faculty Association will be from colleges other than the college where the Faculty member recommended for dismissal is assigned. The committee shall be considered constituted when the hearing committee and the Faculty member have been informed by the Faculty Association President of the committee's formation.

### 3.13.5.

The Hearing Committee shall select a Chair. Unless the parties stipulate to

1 extend the time beyond that which is set forth below, the Chair shall  
 2 conduct a meeting with the attorney representing the MCCC and the  
 3 Faculty member and/or his/her attorney/representative not later than twenty  
 4 (20) business days after the formation of the committee for the purpose of  
 exchanging exhibits, witness lists, and summaries of witness testimony  
 deny admission of an exhibit(s) or witness testimony for failure to comply  
 with this Section.

5 **3.13.6**

6 Unless the parties otherwise agree, the Hearing Committee shall conduct  
 7 the hearing no later than ten (10) business days after the exchange of  
 8 information detailed in Section 3.13.5. Prior to the hearing, the Faculty  
 member must declare, in writing, whether he/she wishes the hearing to be  
 9 public or in executive session. The member may attend the hearing;  
 present any testimony, evidence, or statements, oral or written, in his/her  
 behalf; and be represented by legal counsel or other representative. It is  
 expressly understood the act of testifying will not be subject to reprisal by  
 the MCCC.

10 **3.13.7.**

11 Within five (5) business days after completion of the hearing, the Hearing  
 12 Committee shall provide the Chancellor, and the Faculty member with a  
 13 summary of the evidence that was presented during the hearing. In  
 14 addition, **the Hearing Committee shall render binding written findings**  
**of fact and conclusions of law** and forward these along with its  
 15 recommendation regarding dismissal to the Chancellor. The above  
 16 deadline may be extended up to fifteen (15) business days after completion  
 17 of the hearing, if the Hearing Committee requests briefs and/or  
 recommended findings of fact and conclusions of law from the parties.  
 (emphasis added).

18 **3.13.8.**

19 After receiving the Hearing Committee's summary of evidence, findings  
 20 of fact, conclusions of law, and final recommendation in regard to  
 21 dismissal, the Chancellor, may meet with the Hearing Committee to  
 clarify any questions he/she may have. The Chancellor shall have ten  
 22 (10) business days in which to review the recommendation regarding  
 23 dismissal. The Chancellor may adopt the Hearing Committee's  
 recommendation regarding dismissal or make his/her own  
 24 recommendation and forward the recommendation along with the  
 25 summary of the evidence, a copy of the findings of fact, conclusions of  
 26 law, and final recommendations of the Hearing Committee to the  
 27 Governing Board.

28 **3.13.9.**

The Governing Board will meet with the Faculty member and/or his/her  
 representative and a representative of the administration to hear arguments  
 regarding the Chancellor's and the Hearing Committee's recommendation  
 regarding dismissal. This meeting will be an executive session unless the  
 Faculty member chooses to have this meeting in public. The parties shall  
 have no less than one-half hour to present their respective cases. The

1 length of the meeting shall not exceed one (1) hour.

2 **3.13.10.**

3 The Governing Board, at a public meeting, shall render a final decision for  
 4 retention or dismissal of the Faculty member. A copy of the final decision  
 5 shall be sent (U.S. certified or registered mail) to the Faculty member at  
 6 his/her place of residence as recorded in MCCCD records. It is expressly  
 7 understood that the Governing Board decision does not diminish the  
 8 Faculty member's right to seek other legal remedies under local, state and  
 9 federal law.

10 32. The Chancellor did not forward the Hearing Committee's recommendation  
 11 to the Board for its final determination on whether to retain or dismiss Dr. Martinez.

12 33. Chancellor Glasper imposed the suspension in reliance on the advice of  
 13 counsel. Exhibit D.

14 34. Chancellor Glasper's unilateral suspension of Dr. Martinez violated her  
 15 rights under the RFP and her right to due process under Arizona and federal law.

16 35. Chancellor Glasper's new Statement of Charges of February 10, 2014  
 17 contains allegations regarding Dr. Martinez's alleged violation of federal copyright law  
 18 that were expressly considered and rejected by the Hearing Committee.

19 36. The Hearing Committee specifically concluded that the District failed to  
 20 meet its burden of proof regarding its allegation that Dr. Martinez violated federal  
 21 copyright laws or the District's cash handling policy.

22 37. These findings are binding on the District under RFP 3.13.7, but Chancellor  
 23 Glasper's Statement of Charges specifically faults Dr. Martinez for violating federal  
 24 copyright laws and the cash handling policy. *See Exhibit D, p.2.*

25 38. Chancellor Glasper's new Statement of Charges also contains violations that  
 26 were not set forth in the original Statement of Charges of August 9, 2013 and that were  
 27 never even considered by the Hearing Committee.

28 39. For example, Chancellor Glasper's new Statement of Charges of February  
 10, 2014 claims for the first time that Dr. Martinez violated MCCCD Administrative  
 29 Regulations 1.12.2 and 1.12.3. *See Exhibit D, p.3.*

1           40. Neither of these regulations was even mentioned in the original Statement of  
 2 Charges.

3           41. In addition to violating the RFP, Chancellor Glasper's new Statement of  
 4 Charges violates Dr. Martinez's due process rights under state and federal law.

5           42. Specifically, although Dr. Martinez's suspension was predicated upon a new  
 6 Statement of Charges, she was never even given the opportunity to respond to the  
 7 Statement of Charges in writing before she was suspended.

8           43. Moreover, Chancellor Glasper also failed to allow Dr. Martinez any  
 9 opportunity to present evidence refuting the new Statement of Charges before a neutral  
 10 finder-of-fact.

11           44. Accordingly, Chancellor Glasper's suspension failed to provide Dr.  
 12 Martinez with any due process at all, although it has severely damaged her reputation and  
 13 deprived her of over a year's salary.

14           45. Furthermore, although under the RFP, the Chancellor's Recommendation  
 15 regarding the Hearing Committee's Findings and Conclusions are subject to the Board's  
 16 ultimate review and approval, under RFP 3.13.8-3.13.10, Chancellor Glasper did not  
 17 submit the Committee's findings or his Notice of Suspension for the Board's  
 18 consideration or approval.

19           46. Chancellor Glasper attempted to justify his unilateral, fourteen-month,  
 20 unpaid suspension of Dr. Martinez by claiming that he is not required to submit  
 21 "suspensions" to Board for approval. However, because the original Statement of  
 22 Charges against Dr. Martinez clearly involved "dismissal," not "suspension" both the  
 23 Hearing Committee's recommendation and Chancellor Glasper's Recommendation are  
 24 expressly subject to ultimate Board approval under RFP 3.13:8-3.13.10.

25           47. A chancellor cannot suspend a faculty member for fourteen and a half  
 26 months without pay without the ultimate approval of the Board.

27           48. A suspension without pay for fourteen and a half months amounts to a  
 28 property deprivation sufficient to implicate procedural due process protections.

1 49. Dr. Martinez was not provided a pre-suspension hearing.

2 50. Dr. Martinez was not provided a post-suspension hearing.

3 51. Dr. Martinez filed a grievance regarding the suspension. Exhibits E-H.

4 52. The District told Dr. Martinez she could not grieve the suspension while she  
5 was on suspension and had to wait until she returned to work after the suspension.

6 Exhibit E.

7 53. Although the Notice of Suspension stated Dr. Martinez would resume her  
8 teaching responsibilities in the Fall of 2015, the District interfered with her ability to do  
9 so.

10 54. When the District published the Fall 2015 class schedule, Dr. Martinez was  
11 not included in it.

12 55. Dr. Martinez did not appear in the Fall class schedule until July 2015.

13 56. The normal procedure is to ask tenured professors, based on seniority, what  
14 classes they want to teach in advance of publication, but the District did not ask Dr.  
15 Martinez despite her being a senior faculty member.

16 57. Dr. Martinez began inquiring about her class schedule in March 2015.

17 58. She requested classes that had not been assigned to any instructor or that  
18 had been assigned to adjuncts.

19 59. The normal procedure is for tenured professors to be able to “bump”  
20 adjuncts.

21 60. The District did not assign classes to Dr. Martinez until July 2015, but  
22 denied her access to her office or a computer, parking, and did not issue her faculty  
23 identification.

24 61. The District informed Dr. Martinez that she would not be an employee again  
25 until the first day of accountability, *i.e.*, one week before classes began) and would not  
26 issue her an identification badge or give her access to a computer or her office until that  
27 day.

1       62.    Normally, a tenured professor would have access to her office and computer  
 2 all summer to prepare for fall classes.

3       63.    After Dr. Martinez complained numerous times, the District agreed to give  
 4 her access to her office and computer, but only ten days before classes started, despite Dr.  
 5 Martinez having informed the District that she would be out of town at that time and  
 6 needed access sooner to properly prepare for class and assume her teaching  
 7 responsibilities.

8       64.    The District's refusal to allow Dr. Martinez to assume her teaching  
 9 responsibilities in a timely fashion is an additional measure of punishment and not  
 10 countenanced by the RFP or even the Chancellor's Notice of Suspension.

11       65.    Dr. Martinez had to fight the District just to be able to order textbooks for  
 12 her fall classes before classes commenced.

13       66.    The District communicated Chancellor Glasper's decision to suspend Dr.  
 14 Martinez to the Presidents of the Faculty Senate and advised them not to communicate  
 15 with Dr. Martinez, which impeded her ability to continue in her profession.

16       67.    The suspension prevented Dr. Martinez from finding other meaningful  
 17 employment because she remained a tenured professor with the District.

18       68.    Dr. Martinez's interest in the continuation of her employment and pay is  
 19 significant.

20       69.    The Defendants have no interest that justified suspending Dr. Martinez  
 21 without pay without due process.

22       70.    Dr. Martinez had a property interest in her job and her tenure. *See*  
 23 *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538 (1985).

24       71.    Dr. Martinez was entitled to either a pre-suspension or post-suspension  
 25 hearing. *See Association for Los Angeles Deputy Sheriffs v. Count of Los Angeles*, 648  
 26 F.3d 986, 991 (9th Cir. 2011) ("Temporary suspensions, like terminations, are  
 27 deprivations of employment that can implicate the protections of due process of law"), *id.*  
 28 at 992 (citing *Gilbert v. Homar*, 520 U.S. 924, 930 (1997)); *id.* at 933 ("Summary

1 suspensions with minimal or no pre-suspension due process are constitutional only if  
 2 followed by adequate post-suspension procedures.”).

3 72. Chancellor Glasper’s decision to suspend Dr. Martinez without pay for  
 4 fourteen and a half months violated Dr. Martinez’s constitutional due process rights.

5 73. The applicable constitutional standards were clearly established at the time  
 6 of the District’s and Chancellor’s actions.

7 74. The pertinent constitutional standards are long-standing, were clearly  
 8 established at the time of the suspension, and include:

9 A property right in employment. *See Slochower v. Board of Higher*  
 10 *Education of City of New York*, 350 U.S. 551 (1956); *Perry v. Sindermann*,  
 408 U.S. 593 (1972);

11 A property right in her tenure. *See Board of Regents v. Roth*, 408 U.S. 564,  
 12 576-77 (1982);

13 A right to adequate notice and an opportunity to be heard before a job can  
 14 be taken away. *See Roth*, 408 U.S. at 573 & n. 12; *see also Cleveland*  
*Board of Education v. Loudermill*, 470 U.S. 532, 542-45 (1985).

15 A right to due process free of bias. *See e.g. Palko v. Connecticut*, 302 U.S.  
 16 319, 327 (1937); *Fay v. New York*, 332 U.S. 261, 288 (1947); *Kwock Jan*  
*Fat v. White*, 253 U.S. 454, 457 (1920); *Ciechon v. City of Chicago*, 686  
 F.2d 511, 517 (7th Cir.1982).

17 75. The suspension of fourteen and a half months combined with the actions of  
 18 Chancellor Glasper and the District affected Dr. Martinez’s liberty interest. *See*  
 19 *Finkelstein v. Berguna*, 924 F.2d 1449, 1452 (1991) (“The procedural protections of due  
 20 process apply if the accuracy of the charge is contested, there is some public disclosure of  
 21 the charge, and it is made in connection with termination of employment *or the*  
 22 *alteration of some right or status recognized by state law.*”) (emphasis in original) (citing  
 23 *Vanelli v. Reynolds Sch. Dist. No. 7*, 667 F.2d 773, 777-78 (9th Cir. 1982)).

24 76. Chancellor Glasper justified the suspension based on the charges underlying  
 25 the November 18, 2013 hearing and the new charges he raised in his Notice of  
 26 Suspension.

1       77.    But on December 9, 2013, counsel for the Hearing Committee informed  
 2 Chancellor Glasper it “determined that Phoenix College did not carry its burden of proof  
 3 relating to the issues of copyright violation and the cash handling policy violations.”  
 4 Exhibit I. And, “the District’s failure to carry its burden of proving the alleged copyright  
 5 policy and alleged cash handling policy violations overshadowed the findings of  
 6 insubordination. Therefore, the Committee deemed that the punishment of termination  
 7 was disproportionate to Dr. Martinez’s misconduct.” *Id.*

8       78.    Despite the Hearing Committee’s findings and recommendation and that Dr.  
 9 Martinez has already served a fourteen and a half month suspension without pay, the  
 10 District continues to punish Dr. Martinez for the unproven allegations.

11       79.    On August 24, 2015, despite the District having failed to prove Dr. Martinez  
 12 violated any copyright laws, representatives of the District met with Dr. Martinez with the  
 13 intent of having her sign an Agreement prepared by Phoenix College President Anna[e]  
 14 Solley back in September 2011, which was based on a November 17, 2010 allegation that  
 15 Dr. Martinez violated copyright laws. Exhibit J.

16       80.    The Agreement would impose significant restrictions on Dr. Martinez  
 17 including requiring her to make copies for course work at her own expense, prohibiting  
 18 use of District copying equipment, waive her right to have the District indemnify her,  
 19 waive her right to grieve the District’s discipline, waive all claims she has against the  
 20 District. *Id.*

21       81.    On August 25, 2015, the Interim President, Chris Haines, informed Dr.  
 22 Martinez by letter that the restrictions placed on Dr. Martinez on December 9, 2010,  
 23 which were based on the unproven allegation underlying the August 23, 2013 Statement  
 24 of Charges, would remain in place. Exhibit J.

25       82.    Ignoring that Dr. Martinez had been cleared of the allegations of copyright  
 26 violation and cash handling violation and had served a fourteen and a half month unpaid  
 27 suspension, Interim President Haines informed Dr. Martinez:

28       On December 9, 2010, after receiving the recommendation of the

1       Administrative Review team, the College president issued a memorandum  
 2       directing you to use only course materials approved by the department, that  
 3       are available in the bookstore for sale to students and that are authored by  
 4       persons other than yourself. A copy of the memorandum is attached, and  
 5       its terms are incorporated in this memorandum. The attached directive has  
 6       never been cancelled by a Phoenix College president, and it remains in  
 7       force and effect until cancelled in writing. This memo is intended to  
 8       prevent any misunderstanding on your part that I intend to enforce this  
 9       directive.

10      Also, I am informed that a corrective action was issued to you, for selling  
 11     copies of materials to your students in violation of the MCCCD cash  
 12     handling rules, and that you remain in violation of a related directive to  
 13     reimburse the students the money you collected. I will be working with the  
 14     appropriate officials to address that concern. You may avoid disciplinary  
 15     action by immediately reimbursing the students directly, or by authorizing  
 16     the district to do so by deducting money from your paycheck and  
 17     transferring the amounts due to the students. In the event reimbursement is  
 18     not completed (or authorization is not forthcoming) immediately, I will  
 19     take such action as necessary.

20      Exhibit K.

21      83.     Dr. Martinez's constitutional rights were violated based on the District's  
 22     policy or custom.

23      84.     The District's policies or customs caused a violation of Dr. Martinez's  
 24     constitutional rights.

25      85.     The December 9, 2010 directive limits Dr. Martinez's rights of authorship,  
 26     to use her original work in daily lectures, and to develop new materials. Exhibit L.

27      86.     The District continues to violate Dr. Martinez's constitutional rights by  
 28     imposing restrictions and threatening termination of her employment based on allegations,  
 29     which the District was unable to prove or for which she has already served a fourteen and  
 30     a half month suspension.

31      87.     On October 12, 2015, Dr. Martinez asked the Interim President to cancel the  
 32     December 9, 2010 directive in light of the Hearing Committee's findings. Exhibit L.

33      88.     On October 13, 2015, the Interim President directed Dr. Martinez to her  
 34     department chair or the dean to discuss the directive. *Id.*

35      89.     On October 15, 2015, Dr. Martinez reminded the Interim President that the  
 36     directive was at the president's level and could only be altered at that level. *Id.*

90. On October 27, 2015, the Interim President informed Dr. Martinez that because of this lawsuit, she would not discuss the directive with Dr. Martinez. *Id.*

91. The restrictions the District is imposing on Dr. Martinez interferes with her rights in her own copyrighted work and her First Amendment right to academic freedom.

## Jury Demand

92. Dr. Martinez demands a trial by jury on all triable issues

## COUNT I

(Chancellor Glasper – 42 U.S.C. § 1983 – Liberty interest)

93. All previous paragraphs are incorporated by reference.

94. Chancellor Glasper acting under color of state law suspended Dr. Martinez for fourteen and a half months without pay.

95. The fact of the suspension interfered with Dr. Martinez's ability to perform in her profession and damaged her reputation in her professional community.

96. Chancellor Glasper's actions damaged Dr. Martinez's liberty interests.

## COUNT II

(Chancellor Glasper – 42 U.S.C. § 1983 – Property interest)

97. All previous paragraphs are incorporated by reference.

98. Dr. Martinez had property interests in her contracts and as a tenured professor which are protected under the due process clauses of the United States Constitution.

99. Acting under color of state law Chancellor Glasper deprived Dr. Martinez of property interests in her employment without due process of law.

100. Chancellor Glasper's actions damaged Dr. Martinez.

## COUNT III

(District – 42 U.S.C. § 1983 – Liberty Interest)

101. All previous paragraphs are incorporated by reference.

102. The District acting under color of state law suspended Dr. Martinez for fourteen and a half months without pay.

103. The District interfered with Dr. Martinez's ability to perform in her profession and damaged her reputation in her professional community.

104. The fact of the suspension interfered with Dr. Martinez's ability to perform in her profession and damaged her reputation in her professional community.

105. The District's actions damaged Dr. Martinez's liberty interests.

**COUNT IV**  
(District – 42 U.S.C. § 1983 – Property Interest)

106. All previous paragraphs are incorporated by reference.
107. Dr. Martinez had property interests in her contracts and as a tenured professor which are protected under the due process clauses of the United States Constitution.

108. Acting under color of state law the District deprived Dr. Martinez of property interests in her employment without due process of law.

109. The District's actions damaged Dr. Martinez.

**COUNT V**  
**(District – Declaratory Relief)**

110. All previous paragraphs are incorporated by reference.
111. The District continues to impose the December 9, 2010 directive on Dr. Martinez based on claimed copyright violations.

112. Imposition of the directive interferes with Dr. Martinez's ability to perform her duties as a professor.

113. The copyright violation allegations were the subject of the November 18, 2013 termination hearing.

114. The Hearing Committee found the District did not meet its burden to prove  
those allegations.

115. The Hearing Committee's findings are binding on the District under RFP  
3.13.7.

116. The District is estopped from continuing to impose that directive since the Hearing Committee found the District could not prove the allegations.

117. Dr. Martinez has unsuccessfully sought to have the directive cancelled.

WHEREFORE, Plaintiffs seeks relief as follows:

- A. contractual damages in an amount to be proven at trial;
- B. consequential and incidental damages in an amount to be proven at trial;
- C. damages for pain, suffering, humiliation, embarrassment, mental anguish, anxiety, and emotional distress in an amount to be proven at trial;
- D. an award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;
- E. declaratory relief prohibiting the District from continuing to impose the restrictions in the December 9, 2010 directive;
- F. an award of costs, and
- G. such other and further relief that the Court deems proper.

Dated this 4th day of November 2015.

## SCHLEIER LAW OFFICES, P.C.

By: s/Tod F. Schleier  
Tod F. Schleier

## LAW OFFICES OF KEVIN KOELBEL, P.C.

By: s/Kevin Koelbel  
Kevin Koelbel

Attorneys for Plaintiff

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of November 2015, I electronically transmitted the attached document to the Clerk's office using the CM/ECF System for filing and transmittal of a notice of Electronic Filing to the following CM/ECF registrants:

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